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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MATHEW, FENN C

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 09/10/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/833,401

Applicant(s)

FERBER ET AL.

Examiner

Fenn C Mathew

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7 and 12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern (U.S. 4,962,759) in view of Lin (U.S. 6,183,430) and further in view of Haraga (U.S. 5,245,714). Referring to claim 1, Stern discloses an air mat system comprising an air pump/controller (22), a mat (20), a hose (24), switches (column 4, lines 21-24), and a heating element (120), but does not show a remote control. Lin teaches an analogous device including a controller (4), and a remote control. Lin suggests that remote controls are advantageous (in figures) as a user may lay in the tub and use the remote control to adjust parameters. It would have been obvious to one having ordinary skill in the art at the time of invention to provide a remote control for ease of use and convenience. Haraga teaches a hydrotherapy device including a controller, and an infrared remote control (30). Haraga teaches the advantages of an infrared remote control, particularly noting ease of controlling while lying in the tub and

Art Unit: 3764

prevention of water coming into contact with wires. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to provide the modified Stern device with a remote control as taught by Haraga as an art recognized alternative to the remote control disclosed by Lin to ensure safety while maintaining ease of use and convenience.

4. Referring to claim 2, Stern, as modified by Lin and Haraga teaches the remote control maintaining communication through an infrared transmitter. (Haraga, column 21, lines 1-20).

5. Referring to claim 3-7, limitations regarding various control parameters and programs above are considered obvious design choices well within the knowledge of a skilled artisan to suit various needs and applications as deemed fit by the user.

6. Referring to claim 12, Stern as modified by Lin and Haraga, teaches a bracket mounted to a support surface to hold the remote control. (Haraga 30').

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern in view of Lin and Haraga as applied to claim 1 above, and further in view of Barradas (U.S. 5,588,161). The modified Stern device discloses the claimed invention except for a recess located on the device body to hold the remote control unit. Barradas discloses a hydrotherapy device wherein the device body includes a recess for storage of the remote control device. It would have been obvious to one having ordinary skill in the art at the time of invention to provide the body of the modified Stern device with a recess as taught by Barradas in order to provide a convenient holder for the remote control.

8. Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Haraga. Referring to claim 1, Lin discloses an air pump (4), a mat (33), a hose (41, 42) connecting the air pump to the mat, a controller (4) and a remote control (51) communicating with the controller. Lin lacks a remote control that is not physically connected to the controller. Haraga teaches a hydrotherapy device including a controller (C) and an infrared remote control (30). Haraga teaches that it is advantageous to use an infrared remote control in order to prevent wires from coming into contact with water while a user sits in a tub. It would have been obvious to one having ordinary skill in the art at the time of invention to substitute a wireless remote control as taught by Haraga in order to prevent electrical shock.

9. Referring to claim 8, Lin, as modified above teaches a mat that is made of flexible material and can be rolled up (see fig. 6).

10. Referring to claim 9, the modified Lin device discloses the claimed invention except for the specific material used. Lin does however disclose an embodiment wherein the pad can be rolled up. The specific material used is considered a matter of obvious design choice well within the knowledge of the skilled artisan, as the skilled artisan would choose an appropriate material based on its suitability for the intended use. In the present case, Lin specifies that the massage mat may be rolled up and that the mat must be capable of being submerged in water.

11. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Haraga as applied to claim 1 above, and further in view of Sandrin (U.S. 5,050,591). Referring to claim 12, the modified Lin device discloses the claimed

Art Unit: 3764

invention except for a plurality of suction cups located on the bottom of the mat.

Sandrin discloses an analogous water massage mat including suction cups (6) located on the exterior surface allowing the mat to be attached to a tub surface. It would have been obvious to one having ordinary skill in the art at the time of invention to provide the modified Lin device with suction cups, as taught by Sandrin in order to secure the mat to a tub surface and prevent slipping of the mat during use.

12. Referring to claim 13, Lin as modified above in claim 12 discloses the cups made of a synthetic or natural elastomer. (Sandrin, col. 3, line 65).

13. Claims 14-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandrin in view of Baumann (U.S. 4,122,846). Referring to claim 14, Sandrin discloses a flexible member (1) having at least two layers defining a plurality of passageways (32), a receptacle (4) through which compressed air is provided to the air passages, a plurality of air holes (5) formed in the air passages, and a plurality of hermetically sealed passages secured between the layers defining the plurality of air passages at spaced locations adjacent the air passages and sealed between the layers to prevent water contact (col. 4, lines 8-25). Sandrin discloses that the hermetically sealed passages are filled with water or air in order to cushion a user during use. In col. 16, lines 4-7, Baumann suggests in an analogous device a plurality of foam blocks used for their cushioning properties. It would have been obvious to one having ordinary skill in the art to fill the hermetically sealed passages of Sandrin with foam or foam rubber as taught by Baumann in order to provide alternative cushioned support for a user.

Art Unit: 3764

14. Referring to claim 15, Sandarin as modified above discloses the mat made of a flexible member including a soft vinyl material (col. 2, lines 65-68).

15. Referring to claim 16, the modified Sandarin discloses the two layers of flexible member are polymer sheet material secured together at spaced locations to define air passages. (See abstract).

16. Referring to claim 17, Sandarin discloses a limited number of holes of limited size.

17. Referring to claim 18, Sandarin discloses the 'cushioning chambers' sealed separately from the air passages, with each chamber being made of polymer material.

18. Referring to claim 19, Sandarin discloses the two layers of thermoplastic sheet material bonded together around the cushioning chambers and defining air passages in a branched array.

19. Referring to claims 20-25, the claims are essentially similar in scope to claims 14-19. See discussion above.

Response to Arguments

20. Applicant's arguments, see paper No. 14, filed August 4, 2003, with respect to the rejection(s) of claim(s) 1-25 have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the above-cited references. Furthermore, the use of remote controls are old and well known.

Art Unit: 3764

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



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September 2, 2003